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Sent: Thursday, April 22, 2021 6:51 PM
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Subject: ThermoLife/HumanN - Case ID 8150059851
Attachments: 2021.04.23 Amazon Correspondence.pdf

Please see the attached correspondence.

Thank you,

Karen Evans | Practice Coordinator to Jon Skidmore, Brett Govett, Doug Wabner,
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**VIA Certified Mail
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And E-Mail**

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Re: ThermoLife International, LLC's Request To Initiate Utility Patent Neutral Evaluation
Procedure Against HumanN With Respect To U.S. Patent No. 10,555,968;
Case ID 8150059851

Dear Amazon:

We are in receipt of Amazon's April 2, 2021 communication notifying HumanN of ThermoLife International, LLC's ("ThermoLife") initiation of Amazon's Utility Patent Neutral Evaluation Procedure against HumanN. Because the parties are currently engaged in ongoing litigation concerning the same products and patent claim at issue in the above-captioned Patent Evaluation Process, and because a United States District Judge has temporarily restrained ThermoLife from pursuing this proceeding with Amazon, HumanN respectfully requests that Amazon decline to proceed with ThermoLife's requested Patent Evaluation.

On February 11, 2021, ThermoLife filed a patent infringement suit against HumanN in the United States District Court for the Western District of Texas, Case No. 6:21-cv-00144-ADA, alleging, in relevant part, that HumanN's SuperBeets and BeetElite products—including those offered for sale on Amazon.com—infringe claim 45 of U.S. Patent No. 10,555,968 ("the '968 Patent"). *See* Complaint, Dkt. 1, at 4, 17-21, attached hereto as Exhibit A. That litigation before U.S. District Judge Alan D. Albright is ongoing.

Two months after filing the lawsuit, ThermoLife requested that Amazon institute the above-captioned Patent Evaluation Process against HumanN, asserting that HumanN's SuperBeets and BeetElite products sold on Amazon.com infringe claim 45 of the '968 Patent. As explained above, however, the same infringement claim is at issue in the Western District of Texas suit.

Because ThermoLife has asserted the same infringement claims and seeks essentially the same relief through both actions, HumanN applied for and Judge Albright granted a temporary restraining order that prohibits ThermoLife from taking any action to further pursue evaluation through Amazon's Patent Evaluation Process. *See* Order, Dkt. 33, at 1, attached hereto as Exhibit B. The Court issued this order because it found "a substantial risk of irreparable harm to

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HumanN and to the jurisdiction of [the] Court, if ThermoLife were to attempt to enforce or further pursue extrajudicial review of patent infringement claims relating to the products already accused of infringement in [the] litigation.” *Id.* at 1. This Order will remain in place until the court hears argument on and issues a preliminary injunction that would prohibit ThermoLife from further pursuing evaluation of its infringement claims through Amazon’s Patent Evaluation Process during the pendency of the litigation. *Id.* at 2. A Preliminary Injunction Hearing is set for April 30, 2021.

In light of this Order, and Amazon’s recognition that its patent evaluation process should not be initiated or should be suspended where infringement claims are already the subject of litigation, HumanN requests that Amazon decline to proceed with evaluation of ThermoLife’s patent infringement claims. *See* Amazon Patent Neutral Evaluation Procedure, at 1 (stating that, where “there is litigation pending on a patent subject to a proposed or pending Evaluation, Amazon may decide not to initiate or suspend an Evaluation until the completion of that litigation”).

For the reasons explained in this letter, HumanN requests that Amazon decline to proceed with ThermoLife’s requested Patent Evaluation Process during the pendency of the patent infringement suit before the United States District Court for the Western District of Texas, Case No. 6:21-cv-00144-ADA. If, however, Amazon elects to proceed with the above-captioned Patent Evaluation Process, HumanN will agree to participate in the process to defend its products because not doing so presents a risk of substantial and irreparable harm to HumanN. Thank you for your attention to this important matter.

Respectfully submitted,



Brett C. Govett

BCG

Attachments/Enclosures

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